IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM. FOR JUDGMENT NO. 722 OF 2003

IN

SUMM.SUIT NO.5571 of 1999

Smt Nayana Kishor Mehta ... Plff

versus

Shri Jiten Mathuradas Busa .. Deft

Mr B.A.Vora for Plaintiff

Mr V.G.Mehta for Defendant

CORAM : D.G. KARNIK, J

DATED : 25th April 2005.

P.C:-

1. Heard learned counsel for the parties. The plaintiff has filed this suit for recovery of the money due under a writing dated 1st April, 1998 and a promissory note dated 8th December, 1997. The plaintiff had earlier taken out Summons for Judgment No. 314 of 2002 which was withdrawn with liberty to take out a fresh Summons for Judgment after amendment. Learned counsel for the defendant states that the

affidavit in reply filed to the Summons for Judgment No.314 of 2002 should be treated as affidavit in reply to this Summons for Judgment also.

2. I have perused the affidavit in reply. The defendant has denied the execution of the writing dated 1st April, 1995 and the promissory note dated 8th December, 1997 and the signature on the writing. In the circumstanceas, the plaintiff would be required to establish at trial that loan was advanced as alleged and the defendant had executed a writing and the promissory note as alleged by him. This would require evidence and trial. In the circumstances, triable issues arise in the matter. The defendant is granted unconditional leave to defend the suit. The suit shall stand transferred to the list of commercial causes. The defendant shall file the written statement within four weeks.

D.G.KARNIK, J

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